

Kirkegaard v Smith was a 2019–2020 libel case in the High Court of England and Wales. The Claimant Emil Kirkegaard sued Oliver Smith for £40,000 damages and an injunction after the Defendant called him a paedophile in a [tweet](#) and in three comments on *The Unz Review*. Kirkegaard lost the preliminary judgment in December 2019 and discontinued the lawsuit in May 2020; Smith's legal defence of honest opinion was successful. Kirkegaard won no damages, failed with the injunction and was ordered to pay Smith's legal costs.

The case has been highlighted as important in determining the fact/opinion divide of defamatory imputations and their meaning based on hyperlinked material.^[1]



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Background[\[edit\]](#)

On March 8 2010 and September 8 2012, Emil Kirkegaard wrote two controversial blog posts on his website about child pornography. The first post "On the Prohibition of Animated Child Pornography" argued to legalise animated child pornography in Norway and Sweden where possession is prohibited.^[2] The second post "The Ban on Child Porn Possession" suggested a possible compromise for paedophiles is to drug children asleep before raping them, writing "Perhaps a compromise is having sex with a sleeping child without them knowing it (so, using sleeping medicine). If they dont [sic] notice it is difficult to see how they cud [sic] be harmed, even it is rape".^[3] In the same post, Kirkegaard mentions he left comments on Rick Falkvinge's article on child pornography. These comments published in September 2012 include Kirkegaard describing age of consent a "fiction" and claiming he favours reducing it to 13 years old or younger (if puberty begins at an earlier age), as well as writing a "potential reason why it is a good idea to legalize child porn".^[4]

In January 2018 Kirkegaard's second controversial post was widely quoted by popular blogs, newspapers and news websites in light of his attendance at the London Conference on Intelligence.^{[5][6][7][8][9][10][11][12]} For example, PZ Myers (FreeThought Blogs) described Kirkegaard as having "a way to justify raping children"^[13] and Stewart Lee in an opinion piece for *The Guardian* called Kirkegaard a "paedophilia

apologist".^[14] The Institute of Race Relations also published an article on the London Conference of Intelligence noting "Emil Kirkegaard, who has written supportively of paedophiles being allowed to have 'sex with a sleeping child'".^[15]

Kirkegaard responded in January 2018 to the negative publicity over his controversial second blog post by updating it and claiming it had been taken out of context by journalists. According to Kirkegaard his post about drugging and raping sleeping children was a utilitarianism thought experiment, saying "It describes hypothetical scenarios and courses of action, not any actions endorsed or recommended by me either then or now. Selectively quoting it is dishonest and libelous in many jurisdictions and the same is true for misrepresenting my views. Having sex with sleeping or drugged persons is immoral."^[16]

In January and February 2018, Oliver Smith having read Kirkegaard's two controversial posts and the negative publicity surrounding them – called Kirkegaard a paedophile in one tweet and three comments on *The Unz Review*. Kirkegaard filed a libel suit against him for £40,000 damages and an injunction (to prevent him from repeating the grave allegation).

Meaning and fact vs. opinion^[edit]

The Claimant and Defendant pleaded different meanings of the word "paedophile". Kirkegaard argued the natural and ordinary meaning of the word complained of (what the hypothetical reader would understand the word to mean) was he was "a sexual abuser of children".^[17] Smith, in contrast, argued he meant Kirkegaard was an apologist of paedophilia rather than a child sexual abuser and the hyperlinks in his comments should be taken into consideration.^[18] The Claimant and Defendant both also disagreed on whether the comments complained of were written as statements of fact or expressions of opinion. Kirkegaard argued Smith's comments were statements of fact (albeit false statements), while Smith argued they were his expressions of opinion based primarily on the hyperlinked material.

Judgment^[edit]

The preliminary hearing took place on May 22 2019 but due to procedural issues was adjourned and relisted for 26 November 2019 before Mr Justice Julian Knowles. The preliminary judgment (December 11 2019) ruled in Smith's favour that his four comments were expressions of opinion, and accepted his submissions on their meaning while rejected Kirkegaard's.^[19] Knowles also criticised Kirkegaard for taking Smith's comments out of context by ignoring the hyperlinks (the hyperlinked material quoted Kirkegaard's two controversial blog posts).^[20] On the other hand, given the graveness of the allegation Knowles ruled Smith's opinions are defamatory

of the Claimant under common law. This however, should not be confused with the Defamation Act 2013 which requires serious harm and damage to reputation, as clarified by Knowles "For the avoidance of doubt, I am not deciding the question of serious harm under s 1 of the Defamation Act 2013".^[21]

Aftermath^[edit]

Smith filed for summary judgment to avoid the case going to a trial. Since his comments were determined to be opinions with a basis in hyperlinked material, this provided him with an honest opinion defence. Kirkegaard discontinued the lawsuit on May 21 2020 about a week before the summary judgment hearing was meant to take place. He became immediately liable to pay Smith's legal costs.

References^[edit]

1. ↑ <https://www.5rb.com/case/kirkegaard-v-smith/>
2. ↑ Kirkegaard, Emil. [On the Prohibition of Animated Child Pornography](#). emilkirkegaard.dk (March 8 2010).
3. ↑ Kirkegaard, Emil. [The Ban on Child Porn Possession](#). emilkirkegaard.dk (September 8 2012).
4. ↑ Falkvinge, Rick. [Three Reasons Child Porn Must be Re-Legalised in the Coming Decade](#). falkvinge.net (September 7 2012).
5. ↑ Rawlinson, Kevin., and Adams, Richard. [UCL to investigate eugenics conference secretly held on campus](#). *The Guardian* (January 11 2018).
6. ↑ Baynes, Chris. [University College London launches 'eugenics' probe after controversial conference secretly held on campus](#). *The Independent* (January 11 2018).
7. ↑ Roberts, Tom. [Toby Young Spoke Alongside Man who Argued Raping Unconscious Children is Fine](#). *Evolve Politics* (January 11 2018).
8. ↑ "Toby Young Breeds Contempt". *Private Eye* (January 10 2018).
9. ↑ Tamplin, Harley. [University investigates 'racist' eugenics conference held on campus since 2014](#). *Metro* (January 11 2018).
10. ↑ Watkinson, William. [University to investigate secret eugenics conference on campus attended by Toby Young](#). *International Business Times* (January 11 2018).
11. ↑ Bhandari, Serena. [A secret eugenics conference at UCL was attended by Toby Young](#). *The Tab* (January 11 2018).
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13. ↑ Myers, PZ. [Chloroform, consent...they're both the same thing, right?](#). *FreeThought Blogs* (January 10 2018).
14. ↑ Stewart, Lee. [How Toby Young got where he isn't today](#). *The Guardian* (January 14 2018).

15. ↑ Siddiqui, Sophia. [Eugenics, free speech, double standards](#). Institute of Race Relations (January 25 2018).
16. ↑ Kirkegaard, Emil. [Note \(January 2018\)](#). emilkirkegaard.dk.
17. ↑ *Kirkegaard v Smith* [2019] EWHC 3393 (QB) [13], [15], [17], [19].
18. ↑ *Kirkegaard v Smith* [2019] EWHC 3393 (QB) [41], [42], [43], [44], [49]
19. ↑ <https://www.bailii.org/cgibin/format.cgi?doc=/ew/cases/EWHC/QB/2019/3393.html>
20. ↑ *Kirkegaard v Smith* [2019] EWHC 3393 (QB) [63].
21. ↑ *Kirkegaard v Smith* [2019] EWHC 3393 (QB) [62].